

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**GUN HILL ROAD SERVICE  
STATION, INC., et al.**

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**CASE MANAGEMENT PLAN  
AND SCHEDULING ORDER**

Plaintiffs,  
-against-

**Plaintiffs,**

-against-

EXXONMOBIL OIL CORPORATION,

**Defendant.**

This Civil Case Management Plan, submitted in accordance with Rule 26(f) of the Federal Rules of Civil Procedure (“FRCP”), is adopted as the Scheduling Order of this Court in accordance with Rule 16(f), FRCP.

1. The parties do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial. 25 U.S.C § 636(c).
  2. This case is to be tried to a jury.
  3. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. Any motions to amend or to join additional parties shall be filed within 30 days from the date upon which Defendant's Answer or Motion to Dismiss is due to be filed (set forth in paragraph 6(a), below). *(Mo)*
  4. Initial disclosure pursuant to Rule 26(a)(1), Fed. R. Civ. P., shall be completed not later than 14 days from the date upon which Defendant's Answer or Motion to Dismiss is due to be filed (set forth in paragraph 6(a), below).
  5. All fact discovery shall be completed no later than nine (9) months from the date upon which Defendant's Answer or Motion to Dismiss is due to be filed (set forth in paragraph 6(a), below). *1-14-07* *07/23/2009*

All fact discovery should be completed by March 15, 2010.

6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without application to the Court, provided all fact discovery is completed by the date set forth in paragraph 5 above:

- a. Defendant's Answer or Motion to Dismiss is to be filed no later than May 6, 2009. *See Pre motion conference report.*
- b. Initial requests for production of documents are to be served by July 31, 2009.
- c. Interrogatories are to be served by July 31, 2009.
- d. Depositions are to be completed by *October 23, 2009* *March 15, 2010.*
- e. Requests to Admit are to be served no later than *March 15, 2010.* *October 23, 2009,* *December 4, 2009.*

- 7.
- a. All expert discovery shall be completed no later than *April 29, 2010.*
  - b. No later than thirty (30) days prior to the date in paragraph 5, i.e. the completion of all fact discovery, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions, provided that (i) plaintiff(s)' expert report(s) shall be due at least thirty (30) days before those of defendant(s)' expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 7(a).
8. All motions and applications shall be governed by the Court's Individual Practices, including pre-motion conference requirements. Pursuant to the authority of Rule 16(b)(2), Fed. R. Civ. P., a motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto is made in writing within fourteen (14) days of the close of fact discovery (see paragraph 5 hereof).
9. All counsel must meet face-to-face for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.
10. a. Counsel for the parties have discussed an informal exchange of information in aid of an early settlement of this case and have agreed upon the following:

In the interests of exploring a possible resolution to this matter, the parties agreed to provide Defendant with an additional ninety (90) days for the time in which Defendant's Answer or Motion to Dismiss is due so that Defendant will have an opportunity to investigate Plaintiffs' claims and the parties will be in a better position to participate in settlement discussions.

- b. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: the retention of a privately retained mediator; the mediator will be agreed upon by the parties at a later date.

- c. Counsel for parties recommend that the alternate dispute resolution mechanism designated in paragraph b, be employed by October 1, 2009.
  - d. The use of any alternate dispute resolution mechanism does not stay or modify any date in this Order.
11. The Final Pretrial Submission Date is thirty (30) days following the close of fact and expert discovery (whichever is later). By the Final Pretrial Submission Date, the parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Practices and Rule 26(a)(3), Fed. R. Civ. P. Any motions in limine (for which the promotion conference requirement is waived) shall be filed by the Final Pretrial Submission Date. If this action is to be tried before a jury, proposed voir dire, jury instructions and verdict form shall also be filed by the Final Pretrial Submission Date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the submission. Jury instructions may not be submitted after the Final Pretrial Submission Date, unless they meet the standard of Rule 51(a)(2)(A), Fed. R. Civ. P. If this action is to be tried to the Court, proposed findings of fact and conclusions of law should be submitted by the Final Pretrial Submission Date.
12. Counsel for the parties have conferred about the length of trial. Plaintiffs' present best estimate of the length of trial is three (3) weeks. Defendant's present best estimate of the length of trial is seven (7) or eight (8) days.

**TO BE COMPLETED BY THE COURT:**

*Parties proceed to  
mediation.*

13. [Other directions to the parties]

14. the (next Case Management) (Final Pretrial Conference) is schedule for November 6, 2009 at 10am.

This Order may not be modified of the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend shall be made in a written application in accordance with paragraph 1(E) of the Court's Individual Practices and shall be made no less than five (5) days prior to the expiration of the date sought to be extended.



P. Kevin Castel  
United States District Judge

Dates: New York, New York

3-30-09